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Abolition of Wage Garnishment

Cover Page Footnote

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ABOLITION OF WAGE GARNISHMENT

JOSEPH C. SWEENEY*

I. INTRODUCTION

In legendary times it is said that Roman law permitted creditors to arrest a defaulting debtor, chain him, and offer him for sale as a slave. If no buyer were found, the creditors could cut up the debtor, each creditor receiving his proportionate share.¹ Although Anglo-American law never permitted slavery or butchery for debt, it did provide reasonably close equivalents: Debtors' Prison² and Wage Garnishment.³

Now, as part of the 1968 Consumer Protection Legislation,⁴ Congress will regulate wage garnishment for the first time. It is contended here that Congress, in the exercise of its Bankruptcy⁵ and Commerce⁶ Powers, should abolish wage garnishment.⁷

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1. H. Jolowicz, *Historical Introduction to the Study of Roman Law* 190-92 (2d ed. 1952). During the mature years of Roman law a liquidation-type bankruptcy without provision for discharge of the debtor grew up under the law of *Bonorum Emptio* (or *Venditio*). At the liquidation sale the highest bidder purchased all the debtor's goods in one lot, and was permitted to proceed against any after-acquired property of the debtor. It was also possible to achieve a composition, a type of settlement, with the creditors, scaling down their claims in exchange for immediate payment. W. Buckland & A. McNair, *Roman Law and Common Law* 144, 150, 256 (2d ed. rev. by F. Lawson 1952); W. Buckland, *A Manual of Roman Private Law*, 245-46 (1928); H. Jolowicz, *supra* at 225.

2. See T. Plucknett, *A Concise History of the Common Law* 346 (3d ed. 1940). In 1839 federal law abolished debtor's prison in those states which had abolished them. Act of Feb. 28, 1839, ch. 35, 5 Stat. 321. During the years of "Jacksonian Democracy," debtors' prisons were abolished in most of the Eastern states which still had them. See C. Warren, *Bankruptcy in United States History* 52 (1935); Note, *Present Status of Execution against The Body of The Judgment Debtor*, 42 Iowa L. Rev. 306 (1957). New York's debtors' prison was abolished in 1831. Law of April 26, 1831, ch. 300, [1831] N.Y. Laws 396; see Note, *Arrest and Imprisonment in Civil Actions in New York*, 26 N.Y.U.L. Rev. 172 (1951). In 1969 the only state to retain a debtor's prison for civil debts (other than alimony or child support) is Maine. See N.Y. Times, Oct. 3, 1968, at 75, cols. 3-4.

3. Wage garnishment at common law was a notification to employers not to pay the employee but rather to pay the plaintiff-creditor. The creditor was thereby enabled to reach the property (wages or salary) of the debtor while in the hands of the employer. *Restatement of Judgements* §§ 35, 36 (1942).

4. 15 U.S.C. §§ 1671-77 (Supp. IV, 1969) (popularly known as the Truth-in-Lending Act).

5. U.S. Const. art. I, § 8: "The Congress shall have Power . . . to establish . . . Uniform Laws on the subject of Bankruptcies . . ." Congressional findings in support of the legislation were: "The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country." 15 U.S.C. § 1671(a)(3) (Supp. IV, 1969).

This study deals only with wage garnishment and is not concerned with the garnishment or attachment of other assets nor does it consider the related problems of wage assignments as security, or levies on wages by the Internal Revenue Service or other public authority.

The federal garnishment restrictions, which will become effective July 1, 1970, are a compromise between House bills which would have abolished or severely curtailed garnishment and milder reform legislation favored by the Senate.⁸ The key provision is that:

[T]he maximum part of the aggregate disposable earnings of an individual for any work week which is subjected to garnishment may not exceed (1) 25 per centum of his disposable earnings for that week, or (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage . . . which-ever is less.⁹

The garnishment restriction law is not to be applied to support orders, State or Federal Tax debts, or Chapter XIII Wage-earner Plans,¹⁰ and State laws prohibiting garnishment entirely or restricting its exercise more closely than the federal law are not to be affected.¹¹ Another important provision forbids the employer to fire an employee against whom a single garnishment order has been entered.¹² These federal restrictions

6. U.S. Const. art. I, § 8. Further Congressional findings in support of the legislation were "(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce. (2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce." 15 U.S.C. § 1671(a)(1)(2) (Supp. IV, 1969).

7. Wage garnishment is defined as, "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt." 15 U.S.C. § 1672 (1968).

8. S. 5, 90th Cong., 2d Sess. (1968); H.R. 11601, 90th Cong., 1st Sess. (1967); 2 U.S. Code Cong. & Ad. News 1962 (1968). The House bill proposed a complete prohibition of wage garnishment. *Id.* at 1978. The bill was subsequently amended by a proposal of Congressman Halpern to substitute the provisions of New York's Income Execution Law, N.Y. C.P.L.R. § 5231 (1963). See H.R. Rep. No. 1040, 90th Cong., 1st Sess. (1967). See also Comment, Consumer Legislation and The Poor, 76 Yale L.J. 745 (1967).

9. 15 U.S.C. § 1673(a) (Supp. IV, 1969). "Earnings" is defined as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." "Disposable earnings" is defined as "that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." *Id.* § 1672.

10. *Id.* § 1673.

11. *Id.* § 1677.

12. *Id.*

have been repeated, *pro tanto*, in Uniform Consumer Credit Code,¹³ a comprehensive codification of the entire field of consumer credit relations,¹⁴ prepared by the Commissioners on Uniform State Laws as an outgrowth of the Federal Consumer Protection Act.

The new Code includes provisions on: revolving charge accounts, disclosure of real interest rates, extra credit charges including life insurance, regulation of rate advertising, usury and maximum interest provisions, home solicitation, confession of judgment, deficiency judgments, and wage garnishment. The Code adopts the federal concept of disposable earnings, but increases the exemption from thirty to forty times the federal minimum hourly wage.¹⁵ More importantly the Code absolutely prohibits discharge of an employee by reason of garnishment.¹⁶ Prior to the enactment of the prohibition on firing employees for a single garnishment in the new federal law only four states had attempted this

13. The Uniform Consumer Credit Code was approved by the National Conference of Commissioners on Uniform State Laws on July 30, 1968, following enactment of the Federal Consumer Credit Protection Act of May. The Code was approved by the American Bar Association on August 7, 1968 and submitted to the states. As of September, 1969 it had been enacted by two states: Oklahoma and Utah.

14. See Felsenfeld, Uniform, Uniformed and Unitary Laws Regulating Consumer Credit, 37 Fordham L. Rev. 209 (1968); James & Fragomen, The Uniform Consumer Credit Code: Inadequate Remedies under Article V and VI, 57 Geo. L.J. 923 (1969); Kripke, Consumer Credit Regulation: A Creditor-Oriented Viewpoint, 68 Colum. L. Rev. 445 (1968); Kripke, Gesture and Reality in Consumer Credit Reform, 44 N.Y.U.L. Rev. 1 (1969); Spanogle, The U3C.—It may Look Pretty But Is It Enforceable?, 29 Ohio St. L.J. 624 (1968); Warren & Jordan, The Uniform Consumer Credit Code, 68 Colum. L. Rev. 387 (1968).

15. "The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit sale, consumer lease, or consumer loan may not exceed the lesser of (a) 25 per cent of his disposable earnings for that week, or (b) the amount by which his disposable earnings for that week exceed forty times the Federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, U.S.C. tit. 29, § 206(a) (1), in effect at the time the earnings are payable." Uniform Consumer Credit Code [hereinafter cited as U.C.C.C.] § 5.105(2). The federal minimum as of Sept. 1969 is \$1.60 per hour. See U.C.C.C. § 5.105, Comment. It has been suggested that the Special Committee of Commissioners on Uniform Laws, a state oriented group, drafted these provisions as a reaction to the provision of the federal law giving the Secretary of Labor power to exempt from the law garnishments under "substantially similar" state laws (15 U.S.C. § 1676 (Supp. IV, 1969)) so as to maximize state sovereignty over this aspect of consumer finance. Felsenfeld, *supra* note 14, at 211-12.

16. U.C.C.C. § 5.106: "No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale, consumer lease, or consumer loan."

reform.¹⁷ Anticipating the Supreme Court by a year the Code prohibits garnishment prior to the entry of judgment.¹⁸

II. HISTORY OF WAGE GARNISHMENT

Despite the summary and harsh nature of this collection remedy it is not a survival of medieval common law but rather a nineteenth century proceeding in aid of execution of judgments by attachment.

Actions were commenced at common law by attachment, a direction to the Sheriff, *Capias Ad Respondendum*,¹⁹ to seize the body or property of the defendant to answer plaintiff's writ. However, such pre-trial security in goods or lands did not become customary²⁰ and, although the latter remains a possibility today in states still using common law writs, it has no place in the ordinary law suit in most of the states, so that plaintiffs must bear the risk of defendants' bankruptcy, death or other default during the course of trial and post-trial procedures. This modern result comes from a conscious policy against unnecessary clouding of commercial titles. However, all states do make provision for pre-trial attachment in two special situations: where there is danger of defendant absconding with the fruits of his fraud, plaintiff may petition for pre-trial attachment;²¹ and where defendant cannot be found within the jurisdiction, actions may be commenced by seizure of lands, goods or other assets, sometimes described as Process Quasi In Rem or Foreign Attachment.²² The latter has led to an expansion of the type and character of property which could be the subject of execution.

The collection (or execution) of money judgments employed different

17. Conn. Gen. Stat. Ann. § 52-361(h) (Supp. 1969): discharge, discipline or suspension of employee prohibited unless more than seven garnishments in one year; N.Y. C.P.L.R. 5252 (Supp. 1969): discharge or layoff prohibited; Vt. Stat. Ann. tit. 12, § 3165 (Supp. 1969): discharge prohibited unless previously garnished on five or more separate occasions arising from separate actions. Neither the absolute prohibition on discharge nor the restrictions on such discharge will prevent litigation as to the exact cause of the discharge. Perhaps the absolute prohibition of garnishment as in Pennsylvania and Texas, see notes 32-33 *infra*, will be the best way of preventing unnecessary loss of employment. See James & Fragomen, *supra* note 14, at 937. The outright prohibition of discharge for garnishment as in Hawaii and New York is preferable since it will deter creditors from splitting up causes of action to gain leverage on the debtor.

18. U.C.C.C. § 5.104. See *Sniadach v. Family Fin. Corp.*, 395 U.S. 337 (1969).

19. B. Shipman, *Hand-Book of Common Law Pleading* 18-19 (1894). See Fox, *Process of Imprisonment at Common Law*, 39 L.Q. Rev. 46 (1923).

20. Mussman & Riesenfeld, *Garnishment and Bankruptcy*, 27 Minn. L. Rev. 1, 9 (1942). See Sturges & Cooper, *Credit Administration and Wage Earner Bankruptcies*, 42 Yale L.J. 487, 503-07 (1933).

21. Mussman & Riesenfeld, *supra* note 20, at 11.

22. *Id.* at 8.

types of attachment at common law. One such procedure, *Levari Facias*, permitted chattels and lands of debtors to be constrained (held for ransom) to compel satisfaction of a debt.²³ Another, *Fieri Facias*, was an ancient procedure whereby goods of the debtor could be seized and sold by the sheriff to satisfy the judgment debt.²⁴ In 1285 the Statute of Westminster II authorized yet another procedure, *Elegit*, whereby goods and the use of a portion of the debtor's lands, a tenancy by *Elegit*, could be seized and sold.²⁵ The law courts, however, could not give the judgment creditor complete relief against the fraudulent debtor or the debtor whose only asset was land, thus creditors sought and received the aid of equity through the Statute on Fraudulent Conveyances in 1571, and the subsequent development of Chancery practice to decree the actual sale of debtors' lands.²⁶ Exemptions from execution also came very early, in fact in the same 1285 statute as the new execution procedure.²⁷

In the United States, during the early years of the nineteenth century, there was a consolidation of creditor's remedies into the all-purpose Writ of Execution.²⁸ Concurrently, there was a vast judicial as well as legislative expansion of the type and character of debtors' properties which could be reached by the new writ, going beyond vested estates in realty and corporeal assets in personalty to reach future interests, choses in action and intangible assets.²⁹ Wage garnishment followed as a logical extension of this trend. Since wage garnishment developed after the abolition of debtors' prisons,³⁰ it did not seem unreasonable and was in the spirit of the nineteenth century principles of freedom of contract and survival of the fittest. It appears, however, that the policy factors involved in allowing creditors to force a wage cut on blue-collar employees

23. Riesenfeld, Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus, 42 Iowa L. Rev. 155, 158 (1957). See also Loyd, Executions at Common Law, 62 U. Pa. L. Rev. 354 (1914).

24. Riesenfeld, *supra* note 23, at 157. Another procedure which could be used where the action had been commenced by *Capias ad Respondendum* was execution by *Capias ad Satisfaciendum* whereby the sheriff seizes the body of the defendant to satisfy the judgment. See A. Scott and R. Kent, Cases and Other Materials on Civil Procedure 990-93 (1967).

25. Riesenfeld, *supra* note 23, at 157. See also 2 F. Pollock & F. Maitland, The History of English Law 596 (2d ed. 1898).

26. Riesenfeld, *supra* note 23, at 161.

27. *Id.* at 157 n.7.

28. *Id.* at 163-64. See R. Shinn, Treatise on the American Law of Attachment and Garnishment (1896); Note, Wage Garnishment in Kentucky, 57 Ky. L.J. 92 (1968).

29. G. Glenn, The Law of Fraudulent Conveyances 40-46 (1931). See *Hulbert v. Hulbert*, 216 N.Y. 430, 111 N.E. 70 (1916).

30. See *Boyd v. Buckingham & Co.*, 29 Tenn. 433, 435 (1850): "[W]hen it is remembered that the right to imprison the debtor had been abolished by the act of 1842 . . . only one year before the passage of the attachment law under consideration, the object of the legislature in changing the attachment law, will plainly appear."

were never seriously considered in the formative years of the remedy, a period when the primitive industrial economy did not require massive consumer credit. Subsequently, state legislatures, acting alternatively under the pressures of both organized labor and the business community, attempted to regulate the remedy by exemptions, inclusions, and exclusions producing a quagmire of difficult and confusing rules.

Although the Supreme Court has said that wage garnishment laws "would pass muster under a feudal regime,"³¹ they did not. Present day wage garnishment and the exemptions therefrom are a product of the modern industrial age and, as such, are entirely statutory.³²

31. *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 340 (1969).

32. Ala. Code tit. 7, §§ 995-1071 (1958); Alaska Stat. § 09.35.080 (Supp. 1969); Ariz. Rev. Stat. Ann. § 12-1594 (1956); Ark. Stat. Ann. §§ 30-207 (Supp. 1967), 31-142 (1962); Cal. Civ. Pro. Code §§ 542(b), 690.10 (West 1955), 544 (West Supp. 1968); Colo. Rev. Stat. Ann. § 77-2-4 (1963); Conn. Gen. Stat. Ann. § 52-361 (1958, amended in part in Supp. 1969); Del. Code Ann. tit. 10, § 4913 (1953, amended in part in Supp. 1968); D.C. Code Ann. §§ 16-572, 16-573 (1966); Fla. Stat. Ann. § 222.11 (1961); Ga. Code Ann. § 46-208 (1965); Hawaii Rev. Stat. ch. 652 (1968); Idaho Code Ann. § 11-205 (1948); Ill. Ann. Stat. ch. 62, § 73 (Smith-Hurd Supp. 1969); Ind. Ann. Stat. § 2-4406 (1968); Iowa Code Ann. § 627.10 (Supp. 1969); Kan. Stat. Ann. § 60-2310 (Supp. 1968); Ky. Rev. Stat. § 427.010(2) (1969); La. Rev. Stat. §§ 13:3881, 13:3921-27 (1968); Me. Rev. Stat. Ann. tit. 14, § 2602 (1964 amended in part Supp. 1968) (trustee process); Md. Ann. Code art. 9, §§ 31, 31A, 31B (1957); Mass. Gen. Laws Ann. ch. 246, § 28 (Supp. 1968); Mich. Comp. Laws Ann. § 600.7511 (1968); Minn. Stat. Ann. § 550.37 (Supp. 1969); Miss. Code Ann. § 307 (Supp. 1968); Mo. Ann. Stat. §§ 513.440 (Supp. 1968), 525.030 (1953); Mont. Rev. Codes Ann. § 93-5816 (Replacement 1964); Neb. Rev. Stat. § 25-1558 (1964); Nev. Rev. Stat. § 21.090 (1967); N.H. Rev. Stat. Ann. § 512:21 (1968) (Trustee Process); N.J. Stat. Ann. § 2A:17-61 (1952); N.M. Stat. Ann. § 26-2-1 (Supp. 1969); N.Y. C.P.L.R. 5231 (1963); N.C. Gen. Stat. § 1-362 (1953); N.D. Cent. Code § 32-09-02 (Supp. 1969); Ohio Rev. Code Ann. §§ 2329.62, 2329.66 (Page Supp. 1968); Okla. Stat. Ann. tit. 31, § 4 (1955); Ore. Rev. Stat. § 23.180 (1965); Pa. Stat. tit. 42, § 886 (1966); R.I. Gen. Laws Ann. § 9-26-4 (Supp. 1967); S.C. Code Ann. § 10-1731 (1962); S.D. Code §§ 33.2404, 37.5001 (Supp. 1960); Tenn. Code Ann. § 26-207 (Supp. 1968); Tex. Const. art. 16 § 28 (1876); Tex. Rev. Civ. Stat. Ann. arts. 3832, 3835, 4099 (1966); Utah Code Ann. § 78-23-1 (Supp. 1969); Vt. Stat. Ann. tit. 12, § 3020(5) (Supp. 1969) (trustee process); Va. Code Ann. § 34-29 (Supp. 1968); Wash. Rev. Code Ann. § 7.32.280 (Supp. 1968); W. Va. Code Ann. § 38-4-12 (1966); Wis. Stat. Ann. §§ 267.18-267.24 (Supp. 1969); Wyo. Stat. Ann. § 1-422 (1957). See Brunn, *Wage Garnishment in California: A Study and Recommendations*, 53 Calif. L. Rev. 1214 (1965); LaGrone, *Recovery of a Florida Judgment by Garnishing Wages of the Head of a Family*, 17 U. Fla. Rev. 196 (1964); Comment, *Garnishment of Wages in Pennsylvania: Its History and Rationale*, 70 Dick. L. Rev. 199 (1966); *Legislation, Garnishment in Florida: Analysis, Assessment, and Proposals*, 19 U. Fla. L. Rev. 99 (1966); Note, *Wage Garnishment as a Collection Device* 1967 Wis. L. Rev. 759. See generally *Harris v. Balk*, 198 U.S. 215 (1905). See also Annots., 93 A.L.R.2d 995 (1964); 86 A.L.R.2d 1013 (1962); 82 A.L.R.2d 858 (1962); 75 A.L.R.2d 1437 (1961); 56 A.L.R.2d 13 (1957); 22 A.L.R.2d 904 (1952); 7 A.L.R.2d 680 (1949).

III. PATTERNS OF STATUTORY GARNISHMENT

No two states' wage garnishment laws are alike and it is difficult to characterize the laws under broad headings. Thirteen states apparently exempt 100% of a wage earner's salary under certain circumstances. Of these, only Pennsylvania and Texas³³ have demonstrated a strong public policy against all manner of wage garnishment. The remainder generally condition the exemption upon the wage earner's status as head of a household;³⁴ the use to which the salary may be put, usually in-state family support;³⁵ the character of the wages to be garnished;³⁶ or the character of plaintiff as collection agency.³⁷ It is of interest to note here a Minnesota statutory provision which exempts from garnishment the first six months' wages earned by a person going off relief.³⁸

Most states exempt percentages of wages from garnishment, thereby eliminating the necessity for frequent statutory revision because of inflation. Thus, eight states exempt 90% or more of the garnishee's wage³⁹ while two states exempt 80% or more.⁴⁰ In an inflationary economy it is estimated that the average wage earner needs from 85 to 90% of his salary just to meet current expenses.⁴¹ It would appear, therefore, that legislation permitting a creditor to garnish more than ten percent of the debtor's wage, such as the new Federal Consumer Protection Act, might properly be characterized as antisocial. Ten states exempt more than

33. Texas Const. art. 16, § 28; Pa. Stat. tit. 42, § 886 (1966).

34. Fla. Stat. § 222.11 (1961).

35. Cal. Civ. Pro. Code § 690.11 (West Supp. 1968); Minn. Stat. Ann. §§ 550.37(13) (Supp. 1969), 575.05 (1947); Mont. Rev. Codes Ann. § 93-5816 (1947); Nev. Rev. Stat. § 21.090(h) (1967); N.C. Gen. Stat. § 1-362 (1953); Okla. Stat. Ann. tit. 12, § 850 (Supp. 1969); S.C. Code Ann. § 10-1731 (1962); S.D. Code § 33.2404 (Supp. 1960).

36. Ark. Stat. Ann. § 30-207 (Supp. 1967).

37. Kan. Stat. Ann. § 60-2310(d) (Supp. 1968).

38. Minn. Stat. Ann. § 550.37 (Supp. 1969).

39. Del. Code Ann. tit. 10, § 4913(b) (Supp. 1968) (New Castle County only); Ind. Ann. Stat. § 2-3501 (1968) (90% of excess over \$15 per week); Kan. Stat. Ann. § 60-2310 (Supp. 1968); Mo. Rev. Stat. § 525.030 (1959) (for heads of families); Neb. Rev. Stat. § 25-1558 (1964) (for heads of families); N.J. Stat. Ann. §§ 2A:17-56 (1952), 2A:17-57 (Supp. 1969) (90% exempt if wages exceed \$48 per week up to annual income of \$2500); N.Y. C.P.L.R. 5231(b) (1963) (90% exempt if wage exceeds \$30 per week, otherwise exempt); Ohio Rev. Code Ann. § 2715.30 (1954).

40. Ill. Ann. Stat. ch. 62, § 73 (Smith-Hurd Supp. 1969); La. Rev. Stat. § 13:3881(1) (1968) (80% of excess over \$100 per month minimum).

41. Bureau of Labor Statistics. See Brunn, Wage Garnishment in California: A Study and Recommendations, 53 Calif. L. Rev. 1214, 1245 (1965).

50% of the wage but not more than 75%⁴² and eleven exempt 50% or less.⁴³ In these latter states the problem is, obviously, acute.

There are many states whose legislation exempts a fixed amount of the wage rather than a fixed percentage; six such states have legislation which combine the fixed percent with a minimum definite amount.⁴⁴ No state exempts as much as \$100 per week, but ten states exempt less than \$100 per week.⁴⁵

It is estimated that at present the poverty level, the minimum amount necessary to support a family of four in the United States in an urban surrounding, is \$3,335 (\$64.13 per week).⁴⁶ Furthermore, the Nixon

42. Ala. Code tit. 7, § 630 (1960) (75%); Colo. Rev. Stat. Ann. § 77-2-4 (1963); Del. Code Ann. tit. 10, § 4913(a) (1953) (60% in Kent and Sussex counties); Idaho Code Ann. § 11-205(7) (1948); Ky. Rev. Stat. § 427.010(2)(3) (1969); Md. Ann. Code art. 9, §§ 31, 31A, 31B (1957), art. 83, § 8 (Supp. 1969); Miss. Code Ann. § 307(Tenth) (Supp. 1968); Okla. Stat. Ann. tit. 31, §§ 1 (Supp. 1969), 4(Fifth) (1955); Va. Code Ann. § 34-29 (Supp. 1968).

43. Ariz. Rev. Stat. Ann. §§ 12-1594, 33-1126 (1956); Cal. Civ. Pro. Code § 690.11 (West 1955); Idaho Code Ann. § 11-205(7) (1948); Mich. Stat. Ann. §§ 27A.7511(2)(3), 27A.4031 (1962); Minn. Stat. Ann. §§ 550.37(13) (Supp. 1969), 575.05 (1947); Mont. Rev. Codes Ann. § 93-5816 (1964); Nev. Rev. Stat. § 21.090(h) (1967); Ore. Rev. Stat. § 23.180 (1965); Utah Code Ann. § 78-23-1(7) (1953); Wis. Stat. Ann. § 272.18(15) (Supp. 1969); Wyo. Stat. Ann. § 1-422 (1957).

44. Ga. Code Ann. § 46-208 (1965) (\$3 per day plus 50% of remainder); Hawaii Rev. Stat. ch. 652-1 (1968) (95% of first \$100 per month, 90% of next \$100; 80% of remainder); Ind. Ann. Stat. § 2-3501 (1968) (\$15 per week plus 90% of remainder); N.J. Stat. Ann. §§ 2A:17-56 (1952), 17-50 (Supp. 1969) (90% above minimum \$18 per week); Ohio Rev. Code Ann. §§ 2329.62(C), 2329.66(F), 2329.69 (Page Supp. 1968) (80% of first \$300 per month and 60% of remainder for heads of families to minimum \$150, \$100 for others); Vt. Stat. Ann. tit. 12, § 3020(5) (Supp. 1969) (50% or \$60, whichever is less). See also D.C. Code Ann. § 16-572 (1966) (90% of first \$200 per month, 80% of next \$300 and 50% of the remainder).

45. Alaska Stat. § 09.35.080 (Supp. 1969) (\$350 earned within 30 days for married workers but only \$200 for single); Iowa Code Ann. § 627.10 (Supp. 1969) (\$35 per week for head of family plus \$3 for each dependent); Me. Rev. Stat. Ann. tit. 14, § 2602(6) (Supp. 1968) (not exceeding \$40); Mass. Gen. Laws Ann. ch. 246, § 28 (Supp. 1968) (\$50 per week); N.H. Rev. Stat. Ann. § 512:21 (II) (1968) (\$40 per week); N.D. Cent. Code § 32-09-02 (Supp. 1969) (\$35 per week if not head of a family, \$50 if head of a family plus \$5 for each dependent up to \$25 per week); Ore. Rev. Stat. § 23.180 (1965) (\$175 except for necessities); R.I. Gen. Laws Ann. § 9-26-4 (12c) (Supp. 1967) (\$50); Tenn. Code Ann. §§ 26-207, 26-208 (Supp. 1968) (\$20 per week for head of family plus \$2.50 for each dependent); Wash. Rev. Code Ann. § 7.32.280 (Supp. 1968) (\$35 per week plus \$5 for each dependent to maximum of \$50 per week for heads of families, \$25 per week for single persons).

46. The Index of poverty developed by the Social Security Administration is described in Orshansky, Counting The Poor: Another Look at the Poverty Profile, Soc. Sec. Bull., Jan. 1965. The Dept. of Labor describes an annual wage of \$5,915 (\$113.75 per week) to be a poor standard of living for an urban family. Time, Aug. 8, 1969, at 42.

Welfare Plan, which, if passed, will take effect in 1971, declares the poverty level for an urban family of four persons to be \$3,920 per year (\$75.38 per week).⁴⁷ If this is so, and there is no indication to the contrary, a statute which does not exempt \$100 from garnishment may well force a family below the poverty level. Couple this factor with an absence of an annual legislative revision to counter the effects of inflation and this legislation should be characterized as antisocial.

Another major statutory requirement in some states is that the wages to be garnished must be presently due. A separate garnishment order must, therefore, be served for each pay period.⁴⁸ Other states permit prospective garnishment, fixing the lien on future wages until satisfied.⁴⁹ Again, entitlement to exemption may be dependent on one's status as head of a family⁵⁰ or the existence of family dependents within the state.⁵¹

In general, most statutory exemption provisions have created more problems than they have solved. Since most legislatures contemplated garnishment of a weekly salary, the application of exemptions to a periodic wage at intervals in excess of one week has given rise to considerable litigation.⁵² Another problem arises in the determination of the class of plaintiffs who may garnish and the class of debtors whose wages may be garnished.⁵³ For example, due process of law considerations have

47. For the Nixon Welfare Plan, see N.Y. Times, Aug. 9, 1969, at 10, cols. 1-6.

48. Cal. Civ. Pro. Code § 690.11 (West Supp. 1968); Colo. Rev. Stat. Ann. § 77-13-4 (Supp. 1969); Ill. Ann. Stat. ch. 62, § 73 (Smith-Hurd Supp. 1969); Ohio Rev. Code Ann. § 2715.30 (Baldwin Supp. 1968).

49. Ga. Code Ann. § 46-208 (1965); Hawaii Rev. Stat. ch. 652-1 (1968); Ill. Ann. Stat. ch. 62, § 73 (Smith-Hurd Supp. 1969); Iowa Code Ann. § 627.10 (Supp. 1969); Ky. Rev. Stat. § 427.010 (Supp. 1968); Mass. Gen. Laws Ann. ch. 246, § 32(Eighth) (Supp. 1968); Mont. Rev. Codes Ann. § 93-5816 (Replacement 1964); Neb. Rev. Stat. § 25-1558 (1964); N.Y. C.P.L.R. 5231 (1963); N.D. Cent. Code § 32-09-02 (Supp. 1969); Ohio Rev. Code Ann. § 2715.30 (Baldwin Supp. 1968); Va. Code Ann. § 34-29 (Supp. 1968); Wash. Rev. Code Ann. § 7.32.280 (Supp. 1968).

50. Creditors in certain tort claims, especially in defamation and breach of promise to marry, are often ineligible to garnish. See Annots., 35 A.L.R.2d 1443 (1954); 93 A.L.R. 1088 (1934); 91 A.L.R. 1337 (1934). Lenders at usurious interest are ineligible to garnish. La. Rev. Stat. Ann. § 20:32 (1969).

51. Ark. Const. art. 9, § 2; Cal. Civ. Pro. Code § 690.11 (West Supp. 1968); Fla. Stat. Ann. § 222.11 (1961); Kan. Stat. Ann. § 60-2310 (Supp. 1968); Ky. Rev. Stat. § 427.010 (Supp. 1968); Minn. Stat. Ann. § 575.05 (1947); Mont. Rev. Codes Ann. § 93-5816 (Replacement 1964); Nev. Rev. Stat. § 21.090 (1967); N.C. Gen. Stat. § 1-362 (1953); N.D. Cent. Code § 32-09-02 (Supp. 1969); Okla. Stat. Ann. tit. 31, § 1(16) (Supp. 1969); S.D. Code § 33.2404 (Supp. 1960); Utah Code Ann. § 78-23-17 (Supp. 1969).

52. Abrahams & Feldman, *The Exemption of Wages from Garnishment: Some Comparisons and Comments*, 3 De Paul L. Rev. 153, 156 (1954).

53. There may be no attachment of merchant seamen and fishermen's wages due or

long restricted a state's jurisdiction to garnish in cases where the state had no personal jurisdiction over the employer.⁵⁴ This limitation, however, can have unhappy consequences for corporations doing business in several states.⁵⁵ If wage garnishment must continue, a possible solution would be to require that both the employer and employee be residents of the same state.⁵⁶ Troublesome problems have arisen because of statutory provision in some western states that extends the garnishment exemptions only to the common necessities of life.⁵⁷ While this article does not purport to deal with these problems, it should be noted that were wage garnishment to be eliminated entirely, as proposed here, the problems would perforce be resolved.

accruing, except for support of wife or children. 46 U.S.C. § 601 (Supp. IV, 1969). Wages of federal employees are exempt from state garnishment. *Buchanan v. Alexander*, 45 U.S. (4 How.) 20 (1846). See 40 U.S.C. § 308 (Supp. IV, 1969). But see 28 U.S.C. §§ 2710-17 (1964). Some states may not permit garnishee actions against the state as garnishee. See Annot., 114 A.L.R. 261 (1938).

54. *Ownbey v. Morgan*, 256 U.S. 94 (1921); *Harris v. Balk*, 198 U.S. 215 (1905); see *Atchison, T. & S.F. R.R. v. Wells*, 265 U.S. 101 (1924); Annot., 14 A.L.R.2d 420, 437 (1950).

55. See *Chicago, B. & Q. Ry. v. Hall*, 229 U.S. 511 (1913). An insolvent Nebraska workman was temporarily in Iowa where he was served with process and his wages garnished. Within four months he returned to Nebraska and was adjudicated bankrupt. Nebraska law forbade wage garnishment whereas Iowa permitted it. The workman, having claimed his wages as exempt assets, was discharged in bankruptcy. Subsequently he brought a Nebraska action to recover the wages garnished in Iowa. The Supreme Court held that all the bankrupt's property including the exempt wages passed to the trustee who had power to set such property apart for the bankrupt. The railroad, therefore, was liable to its employee for the wages garnished in Iowa.

Wages of non-resident wage earners which can be found within the state by service on the employer are subject to garnishment. See Annot., 26 A.L.R. 180 (1923). At the same time the exemption statutes of many states are available only for residents: Ark. Const. art. 9, § 2; Cal. Civ. Pro. Code § 690.11 (West Supp. 1968); Del. Code Ann. tit. 10, § 4913 (1953); Fla. Stat. Ann. § 222.11 (1961); Idaho Code Ann. § 11-205 (1948); Kan. Stat. Ann. § 60-2310 (Supp. 1968); Ky. Rev. Stat. § 427.010 (Supp. 1968); Mo. Ann. Stat. § 525.030 (1953); Mont. Rev. Codes Ann. § 93-5816 (Replacement 1964); Nev. Rev. Stat. § 21.090 (1967); N.M. Stat. Ann. § 26-2-27 (1953); N.D. Cent. Code § 32-09-02 (Supp. 1969); Okla. Stat. Ann. tit. 31 § 1(16) (Supp. 1969).

56. See *Brown v. Arabian Am. Oil Co.*, 53 Misc. 2d 182, 278 N.Y.S.2d 256 (Sup. Ct. 1967), holding that the New York income execution statute cannot reach the wages of a non-resident not employed in New York although the garnishee was a resident there. But see *Oystermen's Bank & Trust Co. v. Manning*, 59 Misc. 2d 144, 298 N.Y.S.2d 355 (Sup. Ct. 1969).

57. See *Brunn*, *supra* note 41, at 1216. See also *Abrahams & Feldman*, *supra* note 52, at 166.

IV. DUE PROCESS AND EQUAL PROTECTION TESTS

In one of its first decisions in the field of consumer protection, the Supreme Court held⁵⁸ that Wisconsin's Wage Garnishment Statute⁵⁹ permitting creditors to obtain pre-judgment garnishment of wages unconstitutionally deprived debtors of procedural due process of law under the fourteenth amendment to the U.S. Constitution.⁶⁰ This decision can be extended to the laws of sixteen other states which permit the practice.⁶¹

In *Sniadach v. Family Finance Corp.*,⁶² the plaintiff finance company had begun an action on a promissory note alleging damages in the amount of \$420.00. Prior to judgment in the action on the note, plaintiff filed a sworn statement that defendant was in default on a debt and served the defendant and her employer with a garnishee summons and complaint,⁶³ thereby requiring the employer to pay \$31.59 of the debtor's available wages of \$63.18 to the court pending further order.

58. *Sniadach v. Family Fin. Corp.*, 395 U.S. 337 (1969).

59. Wis. Stat. Ann. § 267.18(2)(a) (Supp. 1969) provides that "[w]hen wages or salary are the subject of garnishment action, the garnishee shall pay over to the principal defendant on the date when such wages or salary would normally be payable a subsistence allowance, out of the wages or salary then owing, in the sum of \$25 in the case of an individual without dependents or \$40 in the case of an individual with dependents; but in no event in excess of 50 per cent of the wages or salary owing. Said subsistence allowance shall be applied to the first wages or salary earned in the period subject to said garnishment action."

60. *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 341-42 (1969): "The result is that a prejudgment garnishment of the Wisconsin type may as a practical matter drive a wage-earning family to the wall. Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing this prejudgment garnishment procedure violates the fundamental principles of due process." (Citation omitted). Wage garnishment is essentially a problem in federal-state relations under the fourteenth amendment since garnishment in the federal courts is employed in accordance with the procedures of the state where the federal court is sitting. See Fed. R. Civ. P. 4(d)(2), 4(d)(6), 4(d)(7), 4(e), 64 (1968). Cf. *Big Vein Coal Co. v. Read*, 229 U.S. 31 (1913). See also Currie, Attachment and Garnishment in the Federal Courts, 59 Mich. L. Rev. 337 (1961).

61. Alaska, Arizona, Arkansas, California, Idaho, Iowa, Minnesota, Montana, New Hampshire, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Washington, Wyoming.

62. 395 U.S. 337 (1969).

63. This case does not involve problems of "sewer service" whereby the consumer debtor is never in fact notified of the initial action, or of the garnishment proceeding, because the summons has not in fact been served by the process server, who has sworn to a false affidavit of service. See Note, Abuse of Process: Sewer Service, 3 Colum. J. L. & Soc. Problems 17 (1967). N.Y. Penal Law §§ 210.35, 210.40 (1967) create the offense of making an apparently false sworn statement. See also N.Y. C.P.L.R. 5251 (Supp. 1969). New York law requires that the garnishee be given 20 days notice that his wages shall be attached. N.Y. C.P.L.R. 5231(d) (1963).

The Wisconsin Supreme Court held that the pre-judgment wage garnishment did not deprive the debtor of due process because the remedy provided for both notice and a hearing at some stage in the process. Furthermore, the choice of an appropriate remedy for creditors was a legislative function.⁶⁴ The dissent felt that the fundamental unfairness of pre-judgment garnishment was in its actual application, and this had been ignored by the majority. Moreover, this unfairness should not be rationalized by legislative freedom of action nor mitigated by the faint possibility of a malicious prosecution action.⁶⁵

The Supreme Court adopted much of the reasoning of the Wisconsin dissent. It is interesting to note that in his concurring opinion Justice Harlan found a deprivation of defendant's property in the "use" of the garnished portion of her wages during the interim period between the garnishment and the culmination of the main suit.⁶⁶

The decision that pre-judgment wage garnishment violates due process, however, does not appear to affect the validity of earlier Supreme Court decisions that post-judgment wage garnishment can meet constitutional standards of notice and hearing.⁶⁷ Nevertheless, the attack against wage

64. *Family Fin. Corp. v. Sniadach*, 37 Wis. 2d 163, 154 N.W.2d 259 (1967), rev'd, 395 U.S. 337 (1969). In his dissent to the Supreme Court's opinion, Justice Black viewed the use of the due process clause to disapprove the state's garnishment policy as inhumane to be "a plain, judicial usurpation of state legislative power to decide what the State's laws shall be." 395 U.S. at 345. Although Justice Black does not cite prior opinions, this view is in accord with his concurrence in *Rochin v. California*, 342 U.S. 165, 174 (1952) and his dissent in *Adamson v. California*, 332 U.S. 46, 68 (1947). See H. Black, *A Constitutional Faith* (1969).

65. *Family Fin. Corp. v. Sniadach*, 37 Wis. 2d 163, 183-86, 154 N.W.2d 259, 270-71 (1967), rev'd, 395 U.S. 337 (1969).

66. 395 U.S. at 342.

67. *Endicott Johnson Corp. v. Encyclopedia Press, Inc.*, 266 U.S. 285 (1924). But see *Hanner v. DeMarcus*, 390 U.S. 736 (1968), dismissing as improvidently granted a writ of certiorari to review the due process implications of a sheriff's sale of property without notice, although pursuant to judgment and execution. Dissenting, Chief Justice Warren and Justices Black and Douglas questioned the continuing validity of the 1924 *Endicott Johnson* decision. "Since the *Endicott* decision, there has been not only an expansion of the scope of the notice requirement itself . . . but a new approach to the constitutional sufficiency of the means of giving notice in particular types of cases. . . .

"The *Endicott* rationale that a party who has litigated a case and had a judgment taken against him is deemed, for purposes of due process, to be on notice of further proceedings in the same action was rejected in *Griffin v. Griffin*, 327 U.S. 220. There the wife won a divorce from her husband in 1926 and an award of \$3,000 per year alimony. In 1938, without notifying her ex-husband, the debtor, she obtained a judgment for alimony arrears and a writ of execution. Under the applicable New York law, the husband could have defeated liability for the accrued arrearage by proof, for example, that the wife had remarried or of change of circumstances, such as comparative financial status, warranting retroactive modification of the alimony award.

"We held failure to give actual notice to the husband of the 1938 proceedings violated

garnishment on constitutional grounds may be expected to continue, based on an equal protection argument.⁶⁸

The essence of the equal protection argument is that a wage garnishment statute is unreasonable class legislation on its face; that is, the weapon coerces only the worker near the poverty level.⁶⁹

An attempt to raise the equal protection and due process arguments was unsuccessfully made in New Mexico in 1968.⁷⁰ Defendant, operator of a collection agency, acquired various accounts against plaintiffs, husband and wife, totalling \$525.00 for small claims; defendant demanded a settlement of \$448.00 in cash. When plaintiff could not raise the necessary funds, defendant began wage garnishment proceedings. This situation presented consumer groups the opportunity to challenge the constitutionality of wage garnishment statutes⁷¹ before a three-judge federal

due process, saying: 'While it is undoubtedly true that the 1926 decree, taken with the New York practice on the subject, gave petitioner notice at the time of its entry that further proceedings might be taken to docket in judgment form the obligation to pay installments accruing under the decree, we find in this no ground for saying that due process does not require further notice of the time and place of such further proceedings, inasmuch as they undertook substantially to affect his rights in ways in which the 1926 decree did not.' . . .

"Does not Griffin point the way to the demands of due process in the instant case? The further proceedings in Mrs. Hanner's case—execution and judicial sale—certainly 'undertook substantially to affect [her] rights.' . . . [I]n the instant case substantial property rights were at stake because state law gave the debtor the right to select the property to be levied on . . ." 390 U.S. at 741-42. (emphasis omitted).

68. See *Moya v. DeBaca*, 286 F. Supp. 606, 609 (D.N.M. 1968) (dissenting opinion). See also *Family Fin. Corp. v. Sniadach*, 37 Wis. 2d 163, 178, 154 N.W.2d 259, 267 (1967) (dissenting opinion).

69. See 114 Cong. Rec. 1833 (1968) (speech by Representative Henry Gonzalez): "For a poor man—and whoever heard of the wage of the affluent being attached?—to lose part of his salary often means his family will go without the essentials. No man sits by while his family goes hungry or without heat. He either files for consumer bankruptcy and tries to begin again, or just quits his job and goes on relief."

Judge Patterson, in discussing prejudgment garnishments, has concluded that, "Every day people are losing their jobs because of this procedure and because of employers' attitudes toward it. These evils turn what was initially intended as an extraordinary remedy into a systematically applied weapon for collection totally destructive of all rights of defendants in the collector's court." Patterson, *Forward: Wage Garnishment—An Extraordinary Remedy Run Amuck*, 43 Wash. L. Rev. 735, 739 (1968).

70. *Moya v. DeBaca*, 286 F. Supp. 606, 607 (D.N.M. 1968).

71. N.M. Stat. Ann. § 26-2-1 (1953): The clerks of the several district courts of the state of New Mexico may issue writs of garnishment returnable to their respective courts in the following cases: (1) In any case where an original attachment may be issued as provided by the attachment laws of the state of New Mexico; (2) Where the plaintiff in any suit sues for a debt and he or someone for him makes [an] affidavit that such debt is just, due and unpaid, and that the defendant has not within his knowledge property in his possession within this state subject to execution sufficient to satisfy such debt; and that the garnishment applied for is not sued out to injure either the defendant or the

court.⁷²

Disposing quickly of the due process argument, the court noted that defendant had a valid judgment against plaintiff before instituting a wage garnishment proceeding.⁷³ Therefore, the debtor had already received ample notice and a sufficient opportunity to defend in the principal action, thus meeting the tests set up by the Supreme Court in *Endicott Johnson Corp. v. Encyclopedia Press, Inc.*,⁷⁴ which involved an almost identical provision of New York law. Plaintiffs alleged that the statutes discriminated unreasonably on the basis of wealth, nature of assets and employment. Therefore, they argued, it discriminated against wage earners as a class since the wage earner was not entitled to have a \$500

garnishee. (3) Where the plaintiff has a judgment against the defendant in some court of the state and he or someone for him makes [an] affidavit that the defendant has not within his knowledge property in his possession within the state subject to execution sufficient to satisfy such judgment. (§ 26-2-1 has been replaced by § 26-2-1 (Supp. 1969)).

§ 24-6-7: Family head not owning homestead—Additional exemption—Limitation in case of necessities and manual labor.—Any resident of this state, who is the head of a family and not the owner of a homestead, may hold exempt from levy and sale, real or personal property, to be selected by such person, his agent or attorney, at any time before sale not exceeding five hundred dollars [\$500] in value in addition to the amount of chattel property otherwise by law exempted; Provided, however, that no exemption other than eighty per cent (80%) of the first seventy-five dollars (\$75.00) of the earnings of the debtor for the thirty (30) days next prior to the service of writ of garnishment shall be allowed under the provisions of this section where the debt sued on was incurred for the necessities of life furnished the debtor or his family, or for manual labor. (§ 24-6-7 has been replaced by § 24-6-7 (Supp. 1969)).

§ 26-2-27: Wages of head of resident family partially exempt—Exceptions.—No person shall be charged as garnishee, in any court in this state, on account of current wages, or salary due, from him to a defendant, in his employ, for more than twenty per cent [20%], of any wages or salary, due such defendant, for the last thirty [30] days' service, unless the wages or salary due, said defendant exceeds seventy-five dollars [\$75.00] per month, garnishment may be had, for twenty per cent [20%] of seventy-five dollars [\$75.00], of such wages and salary, and, in addition thereto, for full amount of the excess of such wages, or salary above seventy-five dollars [\$75.00]. No exemption whatever shall be claimed, under the provisions of this section, where the debt was incurred, for necessities of life, or for any debt, in either of the following cases. In case the debtor is not the head of a family, or in case, the debtor is the head of a family, where the family does not reside in this state. § 26-2-27 has been repealed).

72. 28 U.S.C. § 46(b) (1964).

73. *Moya v. DeBaca*, 286 F. Supp. 606, 608 (D.N.M. 1968).

74. 266 U.S. 285 (1924). See also *Kansas ex rel. Beck v. Occidental Life Ins. Co.*, 95 F.2d 935, 937 (10th Cir.), cert. denied, 305 U.S. 603 (1938); *South Fla. Trust Co. v. Miami Coliseum Corp.*, 101 Fla. 1351, 1357, 133 So. 334, 337 (1931); *Labozetta v. District Court*, 200 Iowa 1339, 1342, 206 N.W. 139, 140 (1925); *Chalmette Petroleum Corp. v. Myrtle Grove Syrup Co.*, 175 La. 969, 982, 144 So. 730, 734 (1932); *Commercial Nat'l Trust & Sav. Bank v. Hamilton*, 101 N.J. Eq. 249, 251, 137 A. 403, 404 (Ct. Err. & App. 1927); *First Nat'l Bank v. Knight*, 127 Okla. 20, 27, 259 P. 565, 570 (1927); *Rosandich v. Chicago, N. S. & M. R.R.*, 185 Wis. 184, 188, 201 N.W. 391, 392 (1924).

exemption⁷⁵ applied to his total wages in the same manner in which such an exemption may be applied against the total assets of non-wage earners.⁷⁶ The majority found the legislative purpose in the exemption statute to be reasonable as relevant to the purpose for which the classification "wage earner" was made. The court considered that most wage earners do not earn more than \$500, and if they were permitted to apply the \$500 exemption to their wages, then no wages would be subject to garnishment. Thus the exclusion of wage earners from the exemption prevented the specific purpose of the garnishment statute from being thwarted.⁷⁷ Noting that there is no constitutional prohibition against classification legislation where the distinctions are relevant to the purpose of the classification,⁷⁸ the majority held that a court may not declare a statute unconstitutional solely upon the ground that it is unjust and oppressive and works hardship on the poor.⁷⁹ With respect to the administration of the exemption statute, the majority saw no equal protection problem since the statute was not self-executing, the debtor being required to file a claim of exemption and demand a hearing in order to recover exempted wages.⁸⁰

The dissent, noting the complex and lengthy procedure for establishing the claimed exemption, uncertainty as to the time period within which the debtor could claim his exemption, and the considerable delays before the exempted portion could be released,⁸¹ found a violation of equal protection in the administration of the garnishment statutes. He concluded that the statutes "set up a veritable obstacle course through which a bewildered, often ignorant, and almost always impoverished, debtor must pick his way in order to attain the expressed public policy of the state that he is to have certain safeguards and protections for his and his family's economic well-being"⁸² These complicated and unreasonable procedures hindering the debtor in the exercise of his rights, in fact, protect the creditors' interest instead of the debtors' for whom the statute was supposedly designed.

Future judicial attacks on wage garnishment statutes should concentrate on the practical administration of the statutes.⁸³ But beyond these

75. 28 U.S.C. § 46(b) (1964).

76. *Moya v. DeBaca*, 286 F. Supp. 606, 608-09 (D.N.M. 1968).

77. *Id.* at 609.

78. *Id.*, citing *Rinaldi v. Yaeger*, 384 U.S. 305 (1966).

79. *Id.*, citing *Fisch v. General Motors Corp.*, 169 F.2d 266 (6th Cir. 1948), cert. denied, 335 U.S. 902 (1949).

80. *Id.* at 608-09.

81. *Id.* at 610.

82. *Id.* at 613.

83. See *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

traditional arguments, there may be a fundamental and personal right to work to support one's family free from harassment,⁸⁴ secreted in the interstices of due process, equal protection, and the commerce and bankruptcy clauses and manifested in the federal and state policies on full employment, racial discrimination, and welfare.⁸⁵

84. Cf. the right of marital privacy discovered in *Griswold v. Connecticut*, 381 U.S. 479 (1965). See generally Kauper, *Penumbras, Peripheries, Emanations, Things Fundamental and Things Forgotten: The Griswold Case*, 64 Mich. L. Rev. 235 (1965); McKay *The Right of Privacy, Emanations and Intimations*, 64 Mich. L. Rev. 259 (1965); Sutherland, *Privacy in Connecticut*, 64 Mich. L. Rev. 283 (1965). Denial of Equal Protection by discriminating against the poor in wage garnishment laws might be developed from the following cases: *Smith v. Bennett*, 365 U.S. 708 (1961): Iowa statute requiring an indigent prisoner to pay a fee for a writ of habeas corpus (\$4) on the allowance of his appeal; *Griffin v. Illinois*, 351 U.S. 12 (1956): Illinois must provide transcripts of trial for indigents of appellate review where transcripts supplied to those who paid fee; *Douglas v. California*, 372 U.S. 353 (1963): California must provide counsel for indigents at appellate stages where review is of right; *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966): Virginia poll tax excluding those unable to pay from voting held to be unconstitutional. See also *Draper v. Washington*, 372 U.S. 487 (1963); *Eskridge v. Washington State Bd. of Prison Terms and Paroles*, 357 U.S. 214 (1958); Note, *Discriminations Against The Poor and The Fourteenth Amendment*, 81 Harv. L. Rev. 435 (1967). An example of the obstacle course for bewildered, ignorant and impoverished debtors may be found in Michigan: where defendant is a householder with a family, indebtedness for personal labor of defendant or his family is exempt from garnishment to the extent of 60% thereof, subject to the following maximum and minimum exemptions: (a) on first garnishment issued in the case, \$50 and \$30 on wages for labor of one week or less, \$90 and \$60 on wages for more than one week; (b) on subsequent garnishments \$30 and \$12 on wages for one week or less, \$60 and \$24 on wages for one week through 16 days, \$60 and \$30 on wages for more than 16 days. Exemption for any other defendant is 40% (maximum \$50; minimum \$20) on first garnishment issued in case and 30% (maximum \$20; minimum \$10) on subsequent garnishments. Mich. Comp. Laws Ann. § 600.7511 (1968).

85. The Employment Act of 1946, 15 U.S.C. §§ 1021-24 (1964), placed the responsibility for achieving full employment and fighting inflation on private enterprise and the federal government.

"The Congress declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essential considerations of national policy, . . . to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work. . . ." Id. § 1021. But see M. Harrington, *The Accidental Century* 299 (1965). See also Civil Rights Act of 1964, 42 U.S.C. § 2000(e-2)(a) (1965): full employment will be available to all regardless of race, color, religion, or national origin. Finally, see Article 23, Universal Declaration of Human Rights approved by the General Assembly of the United Nations Dec. 10, 1948. 3 U.N. GAOR, 1 Res. at 71-77, U.N. Doc. A/810 (1948).

V. NEW YORK'S WAGE GARNISHMENT LAW

Garnishment of wages in New York can be traced back to the Field Code (1848).⁸⁶ Legislative modification occurred in the 1876 Code of Civil Procedure⁸⁷ and the 90% salary exemption was added in 1908.⁸⁸ New York's Civil Practice Act (CPA) developed wage garnishment as the principal creditors' remedy,⁸⁹ although there were costly defects. Under the CPA, the judgment creditor had to apply for a court order which would issue upon recital by affidavit that the creditor had a judgment unsatisfied by attempted personal property execution, and that the wages to be levied upon amounted to at least \$12 per week. Without requiring further notice to the debtor, the court would order a levy upon wages presently due and to become due, but not to exceed the ten per cent of the gross wages.⁹⁰

The drafters of the New York Civil Practice Laws and Rules (CPLR), enacted in 1963, had intended to abolish wage garnishment as such,⁹¹ substituting therefor the depression legislation permitting creditors to obtain court orders fixing the payment of judgments by installments.⁹² The CPLR refers to income execution and would on its face appear to foreclose any attempts at pre-judgment wage garnishment, condemned in the *Sniadach* case.⁹³ Under the language of the statute it could also be

86. 1848 C.P. §§ 289-90 (1848).

87. C.C.P. § 1366 (1876).

88. Laws of April 22, 1908, ch. 433, § 1, [1908] N.Y. Laws 433.

89. N.Y. C.P.A. § 684.

90. See *State Tax Comm'n v. Voges*, 144 N.Y.S.2d 193 (1955) (wage garnishment by public authority properly based on gross salary and not "take-home" pay after withholdings).

91. See Third Report, Leg. Doc. No. 17, Rule 61.5(a) (1959). Income Execution reappears in the Fifth Report, Leg. Doc. No. 15, Rule 5255 (1961).

92. N.Y. C.P.A. § 793, now enacted as N.Y. C.P.L.R. 5226 (1963). "Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation, the court shall order that the judgment debtor make specified installment payments to the judgment creditor. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the judgment creditor by rendering services without adequate compensation, the reasonable value of the services rendered."

93. But see *Glassman v. Hyder*, 23 N.Y.2d 354, 296 N.Y.S.2d 783, 244 N.E.2d 259 (1968). Pre-judgment garnishment was possible under C.P.A. § 684, although the amount

argued that only *net income* can be levied upon.⁹⁴ The statute does not contemplate the necessity of a court order to effect the garnishment. The creditor, however, is required to serve the debtor with a notice that "he [the debtor] shall commence payment of the installments specified to the sheriff forthwith and that, upon his default, the execution will be served upon [the employer]."⁹⁵ The debtor is given a twenty-day period to make the installment payment before service upon the employer can be made.⁹⁶

There have been problems regarding the meaning of the word "earnings" in the CPA and the CPLR; for example, tips received by a restaurant waitress were not considered earnings⁹⁷ while bonuses payable to a professional football player, contingent on general good performance and participation in an agreed number of scheduled games, could be reached and pro-rated to the pay periods for which the income execution was applicable.⁹⁸ Advances paid to salesmen working on commission have created a problem where the "advances . . . continually outpace commissions earned"⁹⁹ so as to immunize the salary from execution by creditors; nevertheless, it is possible to go behind the form of the employment contract to reach such advances as wages.¹⁰⁰

Since the law permits execution on only 10% of the earnings at any one time,¹⁰¹ the New York scheme contemplates that the judgment of one creditor at a time will be satisfied by wage garnishment.¹⁰² As there may be a rush by creditors to obtain garnishment when accident or illness causes delay in payments, priority is determined by the time of delivery of the income execution order to the sheriff of the county of debtor's residence or employment.¹⁰³ Of course, once the employee has used the

could not be paid over until judgment. *Morris Plan Indus. Bank v. Gunning*, 295 N.Y. 324, 67 N.E.2d 510 (1946).

94. N.Y. C.P.L.R. 5231(d) (1963); see *County Trust Co. v. Duerr*, 52 Misc. 2d 411, 275 N.Y.S.2d 910 (Sup. Ct. 1966).

95. N.Y. C.P.L.R. 5231(a) (1963).

96. N.Y. C.P.L.R. 5231(d) (1963).

97. *Orgurchak v. Merrill*, 178 Misc. 872, 36 N.Y.S.2d 29 (App. T. 1942) (N.Y. C.P.A. § 684).

98. *Girard Trust Bank v. Gotham Football Club*, 31 App. Div. 2d 142, 295 N.Y.S.2d 741 (1st Dep't 1968).

99. *Larry Goldwater, Inc. v. C.B. Snyder Nat'l Realty Co.*, 48 Misc. 2d 669, 672, 265 N.Y.S.2d 542, 546 (Civ. Ct. 1965).

100. *Id.*

101. *Shambach v. General Electric Co.*, 6 App. Div. 2d 327, 176 N.Y.S.2d 888 (3rd Dep't 1958) (N.Y. C.P.A. § 684).

102. N.Y. C.P.L.R. 5231(h) (1963). The judgment will be satisfied in full (evidenced by Sheriff's return) before other creditors may execute. *Franklin Nat'l Bank v. Rayno Distrib., Inc.*, 43 Misc. 2d 651, 252 N.Y.S.2d 123 (App. T. 1964). See also *Spatz Furniture Corp. v. Lee Letter Service, Inc.*, 52 Misc. 2d 291, 276 N.Y.S.2d 219 (Civ. Ct. 1966).

103. N.Y. C.P.L.R. 5231(h) (1963); see *Schwartz v. Goldberg*, 58 Misc. 2d 308, 295

90% exempt wages to purchase non-exempt personalty or realty,¹⁰⁴ the creditor may execute on that property.

The judgment creditor obtains an interest in the nature of a lien on unpaid wages at the time the order is served on the employer as well as a cause of action against the employer with respect to the 10% available for execution. Thus, the employer who mistakenly pays the full wage to his employee is liable to the judgment creditor for such mistake.¹⁰⁵

It should be noted that at the present time the New York Legislature is considering a repeal of New York's garnishment statute.¹⁰⁶

VI. GARNISHMENT AND LIQUIDATION BANKRUPTCY¹⁰⁷

Assuming that a wage garnishment order, valid under state law, has been served on the debtor and his employer, the debtor can obtain relief therefrom by filing a voluntary petition in bankruptcy¹⁰⁸ and obtaining a stay order¹⁰⁹ against the employer, the creditor, or the creditor's attorney if the judgment is dischargeable.¹¹⁰ Until service of the stay order,

N.Y.S.2d 245 (Sup. Ct. 1968). Priority in executing on personalty is determined by the time of delivery of the execution writ to the Sheriff of the county where located (N.Y. C.P.L.R. 532(b)) whereas priority in executing on realty is determined by the time of docketing the judgment in the county where the realty is located (N.Y. C.P.L.R. 5203(a)).

104. Exemptions of personalty, N.Y. C.P.L.R. 5205; realty, N.Y. C.P.L.R. 5206.

105. *Royal Business Funds Corp. v. Rooster Plastics, Inc.*, 53 Misc. 2d 181, 278 N.Y.S.2d 350 (Sup. Ct. 1967); *Franklin Nat'l Bank v. Rayno Distrib., Inc.*, 43 Misc. 2d 651, 252 N.Y.S.2d 123 (App. T. 1964).

106. See N.Y.L.J., July 11, 1969, at 1, col. 6.

107. Bankruptcy Act, 11 U.S.C. §§ 1-112 (1964), as amended (Supp. IV, 1969).

108. 11 U.S.C. § 22(a) (1964). A "wage earner" making less than 1500 dollars per year may not be adjudged an involuntary bankrupt. §§ 1, 22(b). The delivery of a garnishment order creating a lien on wages may be an act of bankruptcy leading to an involuntary adjudication. § 21(a)(3). See *Julius S. Cohn & Co. v. Drennan*, 19 F.2d 642 (E.D. La. 1927); *In re Mayhew*, 31 F. Supp. 175 (D. Md. 1940). The garnishing creditor may be estopped from acting as petitioning creditor. *In re Maryanov*, 20 F.2d 939 (E.D.N.Y. 1927).

109. 11 U.S.C. § 29(a) (1964). "A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition by or against him, shall be stayed until an adjudication or the dismissal of the petition; if such person is adjudged bankrupt, such action may be further stayed until the question of his discharge is determined . . ." See *In re Prunotto*, 51 F.2d 602 (W.D.N.Y. 1931); *In re Obergfoll*, 239 F. 850 (2d Cir. 1917); *In re Beck*, 238 F. 653 (S.D.N.Y. 1915); *In re Harrington*, 200 F. 1010 (N.D.N.Y. 1912); *In re Sims*, 176 F. 645 (S.D.N.Y. 1910); *In re Van Buren*, 164 F. 883 (S.D.N.Y. 1908); *In re Smith*, 8 F. Supp. 49 (W.D.N.Y. 1934); *In re Racki*, 8 F. Supp. 526 (W.D.N.Y. 1934).

110. All claims against the debtor as of the day of filing bankruptcy which are made provable by § 103 of the Bankruptcy Act are discharged except those which are not eligible for discharge, 11 U.S.C. § 35 (Supp. IV, 1969), or not allowable by reason of impossible liquidation (§ 93); § 103 makes provable those claims which are listed in the

the bankrupt's employer must comply with the garnishment order;¹¹¹ however, the creditor who receives garnished wages with knowledge of the bankruptcy after filing by the petitioner can be required to turn over such amount to the trustee.¹¹²

The debtor having been adjudicated bankrupt, the trustee may compel the creditor to turn over garnished wages under the provisions of the preferential lien section of the Bankruptcy Act.¹¹³ That statute requires that a lien on specific property be obtained by legal or equitable proceedings.¹¹⁴ Accordingly, where the state law permits garnishment only of wages presently due, the trustee may set aside garnishments of an insolvent¹¹⁵ for the period of four months prior to filing the petition.¹¹⁶ Consequently, where the garnishment lien has attached to specific wages more than four months prior to bankruptcy it may not be set aside.¹¹⁷

bankrupt's schedules. The discharge, of course, relates back to the day of filing the petition. See generally *Brenen v. Dahlstrom Metallic Door Co.*, 189 App. Div. 685, 178 N.Y.S. 846 (1st Dep't 1919); *Refrigeration & Air Conditioning Institute v. Imperato*, 187 Misc. 405, 62 N.Y.S.2d 357 (N.Y.C. Mun. Ct. 1946); *Weinstein v. Strubble*, 142 Misc. 575, 255 N.Y.S. 354 (N.Y.C. Mun. Ct. 1932).

111. *Matter of Palter*, 151 F. Supp. 278 (E.D.N.Y. 1957); see *In re Smith*, 8 F. Supp. 49 (W.D.N.Y. 1934). See also *Germana v. Greyhound Lines, Inc.*, 56 Misc. 2d 572, 289 N.Y.S.2d 120 (Albany City Ct. 1968).

112. *In re Lincks Wire Forming Co.*, 60 F.2d 770 (7th Cir. 1932); *Schrepel v. Davis*, 283 F. 29 (8th Cir. 1922). The trustee may also recover wages paid into court under a garnishment order. *In re Wilks*, 196 F. Supp. 640 (N.D. Cal. 1961).

113. 11 U.S.C. § 107^{1/2} (1964):

"Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition initiating a proceeding under this title by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of this title. . . ."

114. Liens by garnishment are included within 11 U.S.C. § 107 (1964), as set forth in *Crane v. Wikle*, 298 F.2d 261, 263 (9th Cir. 1961). See generally *Metcalf v. Barker*, 187 U.S. 165 (1902).

115. Professor Kripke has pointed out that most wage earners cannot pass the bankruptcy test of insolvency (assets less than liabilities, 11 U.S.C. § 1(19) (1964)). Kripke, *Gesture and Reality in Consumer Credit Reform*, 44 N.Y.U.L. Rev. 1 (1969).

116. *In re Prunotto*, 51 F.2d 602 (W.D.N.Y. 1931); *In re Beck*, 238 F. 653 (S.D.N.Y. 1915); *In re Ludelke*, 171 F. 292 (E.D.N.Y. 1909); cf. *In re Wodzicki*, 238 F. 571 (S.D.N.Y. 1916); *In re Sims*, 176 F. 645 (S.D.N.Y. 1910). See also *In re Rubins*, 74 F.2d 432 (7th Cir. 1934), cert. denied, 295 U.S. 758 (1935).

117. *In re Beck*, 238 F. 653 (S.D.N.Y. 1915); *In re Smith*, 8 F. Supp. 49 (W.D.N.Y. 1934). See also *United States Rubber Co. v. Poage*, 297 F.2d 670 (5th Cir. 1962); *McLeod v. Cooper*, 88 F.2d 194 (5th Cir.), cert. denied, 301 U.S. 705 (1937); *Morris W. Haft & Bros., Inc. v. Wells*, 93 F.2d 991 (10th Cir. 1937); *In re Snitzer*, 62 F.2d 285 (7th Cir. 1932); *Oilfields Syndicate v. American Improvement Co.*, 256 F. 979 (S.D. Cal.), aff'd, 260 F. 905 (9th Cir. 1919); *In re Neighbor's Food Market, Inc.*, 183 F. Supp. 433 (N.D.

Where the state law permits garnishment of prospective wages, as in New York, the trustee may set it aside.¹¹⁸ Uncertainty, therefore, has developed with respect to the inchoate lien created by a pre-judgment attachment.¹¹⁹ In addition to these rights, the trustee may set aside wage garnishment as a preference or as a voidable transfer.¹²⁰ Liquidation is preferable to perpetual garnishment and threat of job loss.

VII. CHAPTER XIII WAGE EARNER PLANS

It is submitted that abolition of the creditor remedy of wage garnishment should not destroy the possibility of the poor or middle class obtaining necessary credit. The creditor is not remediless; there will still remain the traditional rights for the judgment creditor to attach non-exempt realty or personalty or to obtain involuntary adjudication of bankruptcy. Of course, the ghetto-dweller seldom has realty and collection agencies are not interested in used furniture; thus, the creditor can argue that the traditional execution remedies are worthless.

Congress, however, has given an additional remedy in the Chapter XIII Wage Earner's Plans.¹²¹ Obviously, there will be some anxiety among creditors because any remedy under Chapter XIII will have to be

Ohio 1960); *In re Boylan*, 65 F. Supp. 105 (E.D. Pa.), *aff'd*, 157 F.2d 518 (3d Cir. 1946); *In re Demountable House Corp.*, 58 F. Supp. 955 (S.D. Fla. 1945).

118. *In re Barry Industries, Inc.*, 127 F. Supp. 793 (E.D. Mich. 1955); *In re Unit Oil Co.*, 50 F. Supp. 264 (D. Minn. 1943).

119. See *In re West Hotel, Inc.*, 34 F.2d 832 (D. Minn. 1929); *Mussman & Riesenfeld*, *supra* note 20; cf. *In re Lesser*, 108 F. 201 (S.D.N.Y. 1901). *Contra*, *Morris W. Haft & Bros., Inc. v. Wells*, 93 F.2d 991 (10th Cir. 1937).

120. See 11 U.S.C. § 96(b) (1964); 11 U.S.C. § 110(c), as amended 11 U.S.C. § 110(c) (Supp. IV, 1969). See also *Adler v. Greenfield*, 83 F.2d 955 (2d Cir. 1936).

121. 11 U.S.C. §§ 1001-86 (1964), as amended (Supp. IV, 1969). For general discussions of Chapter XIII see: *Brown*, A Primer on Wage-Earner Plans under Chapter XIII of the Bankruptcy Act, 17 Bus. Law. 682 (1962); *Chandler*, The Wage Earners' Plan: Its Purpose, 15 Vand. L. Rev. 169 (1961); *Countryman*, Proposed New Amendments for Chapter XIII, 22 Bus. Law. 1151 (1967); *Hilliard & Hurt*, Wage Earner Plans under Chapter XIII of The Bankruptcy Act, 19 Bus. Law. 271 (1963); *MacLachlan*, Puritanical Therapy for Wage Earners, 68 Comm. L.J. 87 (1963); *McDuffee*, The Wage Earner's Plan in Practice, 15 Vand. L. Rev. 173 (1961); *Meth*, Filling The Gaps in The Law of Consumer Bankruptcy, 23 Bus. Law. 173 (1967); *Nadler*, The Problem of the Insolvent Wage Earner, 67 Comm. L.J. 65 (1962); *Twinem*, American Bar Association Approves Proposed Amendment to Bankruptcy Act, 19 Pers. Fin. L.Q. 109 (1964); *Woodbridge*, Wage Earners' Plans in The Federal Courts, 26 Minn. L. Rev. 775 (1942); *Comment*, Wage Earners' Plans—Chapter XIII, 45 Marq. L. Rev. 582 (1962); *Comment*, The Problem of Consumer Bankruptcy: Is Amendment of The Bankruptcy Act The Answer?, 63 Mich. L. Rev. 1449 (1965); *Comment*, Emergence of The Wage Earner's Plan, 4 Santa Clara Law. 72 (1963); *Comment*, Should Chapter XIII Bankruptcy Be Involuntary?, 44 Texas L. Rev. 533 (1966); *Note*, Relief for The Wage Earning Debtor: Chapter XIII, or Private Debt Adjustment?, 55 Nw. U.L. Rev. 372 (1960).

weighed against the debtors' substantive and procedural rights therein; a right to be protected from usurious loans,¹²² finance company defenses,¹²³ unconscionable agreements,¹²⁴ wage garnishments,¹²⁵ and loss of employment by reason thereof.¹²⁶ Thus, ghetto credit practices might be subjected to a close and searching inquiry, while legitimate credit sources should have nothing to fear. Yet, this important legislation remains a dead-letter in many federal districts.¹²⁷ The first step toward abolition of wage garnishment must be education of the bar, the bankruptcy referees, and the public as to the benefits available from this progressive legislation, first enacted as part of the 1938 Chandler Act.¹²⁸ This is not to expect the impossible from the existing bankruptcy court structure. Surely additional clerical personnel, computer leasing time and additional referees will be needed to effectuate congressional intent. In urban industrial centers there should be wage earner referees specifically trained in debt counselling.

The purpose of Chapter XIII is to enable the debtor wage earner to make payment in full out of future earnings looking to rehabilitation rather than liquidation. Congress, however, recognized that full payment may not always be possible without undue hardship or economic waste; therefore, there are several types of plans available:

(1) *Extension of time* to make full payment. This method enjoys a privileged status in that confirmation of this type plan is not considered

122. *Cope v. Aetna Finance Co.*, 412 F.2d 635 (1st Cir. 1969); *In re Bogan*, 281 F. Supp. 242 (W.D. Tenn. 1968); *In re Perry*, 272 F. Supp. 73 (D. Maine 1967).

123. See *Unico v. Owen*, 50 N.J. 101, 232 A.2d 405 (1967).

124. *In re Elkins-Dell Mfg. Co.*, 253 F. Supp. 864 (E.D. Pa. 1966).

125. *In re Potts*, 142 F.2d 883 (6th Cir. 1944); *In re Freeman*, 49 F. Supp. 163 (S.D. Ga. 1943); cf. *Reed v. General Fin. Loan Co.*, 394 F.2d 509 (4th Cir. 1968).

126. *In re Jackson*, 290 F. Supp. 872 (S.D. Ill. 1968).

127. N.Y. Times, Oct. 10, 1968, at 73, col. 1-3, 74, col. 6-7. 42 Wage Earner Plans were filed in New York as opposed to 7000 straight bankruptcies whereas 8000 Wage Earner Plans were filed in Birmingham, Alabama as opposed to 2296 straight bankruptcies. The Birmingham District uses computerized operations. It is reported that a Kansas City organization, Electronic Processing, Inc., with a leased computer handles 12,700 plans for referees in ten states. See also Sloan, *Wage Earners' Plan*, 33 Ref. J. 5 (1959). Nationwide only about 9% of all bankrupts are businesses, the remainder being principally voluntary bankruptcies by individuals. Of all the filings in straight bankruptcy 90% of the estates have no assets. See Annual Report of the Director of the Administrative Office of the United States Courts (1968). Thus, the Wage Earner Plan with its provisions for eventual repayment of all or part of the debt is an acceptable middle way between the total loss to the creditor under straight bankruptcy and total loss to the debtor under wage garnishment.

128. 52 Stat. 930 (1938).

a discharge in bankruptcy for the debtor who has previously obtained a discharge in bankruptcy within six years.¹²⁹

(2) *Composition*, whereby the creditors agree to a scaling down of debts. Confirmation of this type wage earner plan is considered to bar a bankruptcy discharge within six years within the meaning of the Bankruptcy Act.¹³⁰

(3) The plan may combine both the features of *extension* and *composition*; however, the presence of the composition in the confirmed plan will also bar a bankruptcy discharge.¹³¹

Historical antecedents of the wage earner plan may be seen in voluntary arrangement plans for corporations, partnerships and individuals under Chapter XI; reorganization provisions under the old section 77 of the Bankruptcy Act; equity reorganizations under the state laws; the composition and extension provisions of the Third Bankruptcy Act in 1874; and common law compositions.¹³² In its broadest aspects the rehabilitation provisions for arrangement plans under Chapter XIII are similar to the provisions of Chapter XI.¹³³

129. *Perry v. Commerce Loan Co.*, 383 U.S. 392 (1966). See also *In the Matter of Schlageter*, 319 F.2d 821 (3d Cir. 1963); *In re Edwards*, 73 F. Supp. 312 (S.D. Cal. 1942). Section 32 of the Bankruptcy Act provides: "The court shall grant the discharge unless satisfied that the bankrupt . . . in a proceeding under this Act commenced within six years prior to the date of the filing of the petition in bankruptcy has been granted a discharge, or had a composition or an arrangement by way of composition or a wage earner's plan by way of composition confirmed under this Act. . . ." The prior discharge in a Chapter XIII extension proceeding does not bar discharge in straight bankruptcy within six years. 11 U.S.C. § 32(c)(5); *Fishman v. Verlin*, 255 F.2d 682 (2d Cir. 1958); *In re Thompson*, 51 F. Supp. 12 (W.D. Va. 1943).

130. Cf. *Webb v. Levin*, 374 F.2d 186 (4th Cir. 1967); *Barnes v. Maley*, 360 F.2d 922 (7th Cir. 1966) (a Chapter XI Extension Arrangement). See Kennedy, *Hospitality for Repeaters under The Bankruptcy Act: Recent Developments*, 69 Comm. L.J. 213 (1964).

131. Cf. *Perry v. Commerce Loan Co.*, 383 U.S. 392, 404 (1966), where the Court, in referring to the situation of the confirmed wage earner plan for extension of time where the debtor is unable to complete the plan within three years due to no fault of his own said: "relief under Section 661 [11 U.S.C. § 1061 (1964)] would, in effect, constitute an attempt to transpose an extension plan into a composition, and a grant of relief thereunder would, at that time, be tantamount to a confirmation of a composition. The six-year bar would, therefore, be operative in such a situation."

132. See J. MacLachlan, *Bankruptcy* §§ 309-11 (1956).

133. Both chapters provide only for voluntary petitions by debtors (ch. XI, § 706(5); ch. XIII, § 1006(6)), whereas liquidation bankruptcy and Chapter X reorganization may be brought voluntarily or involuntarily. Neither Chapter XI nor XIII permits the plan to affect security interests in realty. However, the Chapter XIII plan may affect both unsecured claims and secured claims on personalty, whereas the Chapter XI plan may affect only unsecured claims (ch. XI, § 707(1); ch. XIII, § 1046(2)); the Chapter X Reorganization Plan may affect secured and unsecured claims. Nevertheless, Chapter XIII plans must

Not the least attractive aspect of Chapter XIII is its informality¹³⁴ and the fact that it is less expensive than straight bankruptcy.¹³⁵ As in straight bankruptcy, law suits and legal action, including wage garnishment, can be stayed until the final decree.¹³⁶ Normally, the confirmed plan must be completed in three years.¹³⁷ Statistics, however, indicate that less than 45% of the plans are fully completed.¹³⁸ If it is obvious that the plan cannot be effectuated, it should not be confirmed, but rather the proceeding should be converted into a straight bankruptcy.¹³⁹ Similarly, if the debtor is unable to comply fully with the plan, through no fault of his own, three years after confirmation, the court can grant a discharge.¹⁴⁰ The plan may provide for the debtor to pay a stated amount weekly or monthly to the trustee. The courts with the largest volume of Chapter XIII proceedings, however, consider the most effective method of effectuating the plan to be an order to the employer to pay the debtor's salary directly to the trustee, who then pays the creditors and the debtor after determining the needs of the debtor and his family.¹⁴¹

There is no longer a limitation on the amount of wages or salary neces-

treat all unsecured creditors in the same way: either by extension or composition (§ 1046(1)); whereas Chapter XI plans may divide the unsecured creditors into classes (§§ 756-57). Both the Chapter XI and the Chapter XIII plans must be approved by a majority in number and amount of the unsecured creditors whose claims have been provisionally proven and allowed (ch. XI, § 762; ch. XIII, § 1052). However, since the Chapter XIII plan may affect secured personal property creditors, there is a further requirement that the plan be approved by all secured creditors whose claims are "dealt with" by the plan (§ 1052(1)). See *Cheetham v. Universal C.I.T. Credit Corp.*, 390 F.2d 234 (1st Cir. 1968), holding that a secured party is not materially and adversely affected by an extension or composition which restricts his security. See also *Terry v. Colonial Stores Employee's Credit Union*, 411 F.2d 553 (5th Cir. 1969).

134. Chapter XIII plans are referred to the bankruptcy referee rather than the district judge as in Chapter X.

135. The petition may be filed with the \$15 filing fee or the plan itself may provide for installment payments of the fees. 11 U.S.C. § 1024(2) (1964). There is an additional \$15 fee. 11 U.S.C. § 1033(2) (1964). In straight bankruptcy the filing fee is presently \$50, although this may be paid in installments in voluntary bankruptcy.

136. 11 U.S.C. §§ 1014, 1062 (1964).

137. *Id.* § 1061.

138. *N.Y. Times*, Oct. 10, 1968, at 74, col. 7.

139. The statute now requires merely that the plan be "for the best interests of the creditors and [be] feasible" 11 U.S.C. § 1056(a)(2) (1964). Language requiring that the plan be "fair and equitable" has been repealed. Act of July 7, 1952, ch. 579, § 50, 66 Stat. 437, amending Act of June 22, 1938, ch. 575, § 656, 52 Stat. 935 (codified at 11 U.S.C. § 1056 (1964)).

140. 11 U.S.C. § 1061 (1964).

141. *Id.* § 1058. See *Rice, The Trustee Under Chapter XIII*, 30 *Ref. J.* 102 (1956).

sary to qualify as a petitioning wage earner,¹⁴² but the petitioner must allege that his principal income comes from wages, salary, or commissions¹⁴³ and that he is insolvent in either the bankruptcy or equity sense¹⁴⁴ and desires to effect an extension or composition out of future earnings. Although Chapter XIII is wholly voluntary it may be used by a bankruptcy debtor either before or after adjudication in liquidation bankruptcy, whether it be voluntary or involuntary.¹⁴⁵ If arrangement under Chapter XIII is impossible, a petition originally filed under the Chapter may be converted into bankruptcy adjudication with the debtor's consent¹⁴⁶ while petitions converted to Chapter XIII after a bankruptcy adjudication may revert to liquidation bankruptcy.¹⁴⁷ As with straight bankruptcy, the wage-earner must list all debts in the schedules in order to enjoy discharge from such debts as are provable, allowable, and eligible for discharge.¹⁴⁸

The arrangement plan can be filed with the petition but must be submitted to the scheduled creditors at the first meeting of creditors;¹⁴⁹ the plan must deal with unsecured debts on equal terms, must submit future earnings to court control and must provide for modification of the installments.¹⁵⁰ Furthermore, the plan may deal with secured debts individually and on unequal terms of priority or postponement and may reject executory contracts;¹⁵¹ however, any plan which deals with secured creditors requires their written consent.¹⁵² Nevertheless, this right of secured creditors may be meaningless in view of the referee's power to deny repossession or foreclosure on the security.¹⁵³

142. The \$5,000 upper limit was repealed by Act of May 13, 1959, Pub. L. No. 86-24, § 1, 73 Stat. 24 (codified at 11 U.S.C. § 1006(8) (1964)).

143. 11 U.S.C. § 1006(8) (1964).

144. Bankruptcy insolvency means assets less than liabilities (§ 1(19)) whereas equity insolvency is defined in Chapter XIII as "[inability] to pay . . . debts as they mature" (§ 1023); cf. §§ 530 and 723. Contrast N.Y. Debt. & Cred. Law § 271 (1945).

145. 11 U.S.C. § 1022 (1964).

146. *Id.* § 1066(2).

147. *Id.* § 1066(1).

148. *Id.* § 1060. "[T]he court shall enter an order discharging the debtor from all his debts and liabilities provided for by the plan, but excluding such debts as are not dischargeable under section 35 of this title held by creditors who have not accepted the plan." *Id.*

149. *Id.* § 1033.

150. *Id.* § 1046(1), (4), (5).

151. *Id.* § 1046(2), (3), (6).

152. *Id.* § 1052(1). See *Cheetham v. Universal C.I.T. Credit Corp.*, 390 F.2d 234 (1st Cir. 1968).

153. 11 U.S.C. §§ 1014, 1057 (1964). See *In re Duncan*, 33 F. Supp. 997 (E.D. Va. 1940), in which the referee's right to deny reclamation was affirmed where the debtor had

A majority in number and amount of unsecured creditors must approve the plan for it to be confirmed by the court.¹⁵⁴ Once confirmed, the plan is binding on the debtor and all creditors¹⁵⁵ and the court will retain jurisdiction of the debtor, his future wages and his job security.¹⁵⁶

VIII. CONCLUSION

The principle argument in favor of the preservation of wage garnishment is that it is essential to the continued growth of the national economy; the ability to coerce payment from consumers being vital to the consumer credit industry and economic expansion being contingent upon the growth of consumer credit. The question whether consumer credit, monetary policy, or business reinvestment is the triggering factor in economic growth may be left to the economists,¹⁵⁷ but the contention that consumer credit is the most important factor is not provable. That wage garnishment must be retained in order to coerce dishonest debtors is certainly a valid argument if it could be shown that there was some deterrence therein, but this seems a task similar to proving that capital punishment deterred homicide.

Arguments against wage garnishment may be made at several levels: (1) It is the precipitating factor in an overwhelming number of voluntary bankruptcies; bankruptcy being undesirable for both creditors who lose everything and debtors who are stigmatized.¹⁵⁸ (2) The percentage of credit to total sales is greater in states with tough garnishment laws and this represents over-extension by marginal high-risk creditors who deserve no protection.¹⁵⁹ (3) It produces excessive economic and social

substantial equity and the secured creditor had acquiesced in prior defaulted installments; In the Matter of Clevenger, 282 F.2d 756 (7th Cir. 1960); cf. Hallenbeck v. Penn Mut. Life Ins. Co., 323 F.2d 566 (4th Cir. 1963); In the Matter of Copes, 206 F. Supp. 329 (D. Kan. 1962). But see In re Pizzolato, 268 F. Supp. 353 (W.D. Ark. 1967), where the debtor, a practical nurse, needed her car, secured to the creditor, to drive to work; the petition to reclaim for default in installments was held properly denied in view of the debtor's substantial equity, the fact that the security (the car) was essential to the entire plan and there would be no actual impairment of security. See also First Nat'l Bank v. Cope, 385 F.2d 404 (1st Cir. 1967).

154. 11 U.S.C. § 1052 (1964).

155. Id. § 1057.

156. Id. § 1058.

157. See J. Galbraith, *The New Industrial State* 109-27 (1967); M. Friedman, *Capitalism & Freedom* 37-55 (1962); P. Samuelson, *Economics* (7th ed. 1967); G. Sullivan, *The Boom in Going Bust* 24-26 (1968); S. Slichter, *Economic Growth in the United States* 110-33 (1961).

158. See 2 U.S. Code Cong. and Admin. News 1962 (1968).

159. Cf. Kripke, *Gesture and Reality in Consumer Credit Reform*, 44 N.Y.U.L. Rev. 1, 30 (1969); Project, *Wage Garnishment in Washington—An Empirical Study*, 43 Wash. L. Rev. 743, 772-73 (1968). But see Brunn, *supra* note 41, at 1230-41 where it is argued that the

waste; the legal system bears the cost of collection for the benefit of high-risk creditors, and those fired by their employers become public charges. (4) Wage garnishment has a devastating effect on the employment relation; employers develop a low tolerance to wage garnishment because they are inconvenienced and risk financial loss.¹⁰⁰ (5) Because of technological improvements, social insurance and improved security devices, it is no longer necessary. (6) It is used only against the poor and ignorant who are the beneficiaries of conflicting social legislation.

These arguments do not conclusively demonstrate the benefits or unreasonableness of wage garnishment. Congress, however, in restricting wage garnishment, believes that there is a correlation between wage garnishment and the increasing numbers of voluntary bankruptcies,¹⁰¹ but has not as yet followed through to the logical conclusion, abolition of wage garnishment entirely. More important than the purely economic arguments is the argument that wage garnishment cripples the employment relation. Beyond this is the moral argument that it is used chiefly to coerce the poor and ignorant. For these reasons it should be abolished.

It may be concluded that the existing confusion in the nation's wage garnishment laws benefit high-risk collection agencies and dishonest debtors whereas the actual operation of the laws coerces the defenseless. In his classical study of the low income market, David Caplovitz has written:

The present legal structure thus falls short of its goals because its image of the low-income consumer is not correct. As a result, it unwittingly favors the interest of the merchant over those of the consumer by permitting deviant practices which take advantage of the consumer's ignorance. . . .

It is instructive to contrast the legal machinery dealing with the consumer defendant with that dealing with the juvenile defendant. Enlightened public opinion has led to the emergence of legal arrangements for juvenile offenders which, if biased

percentage of credit sales to total sales in states with garnishment is the same as in states without garnishment.

160. This was the essence of the testimony of Secretary of Labor Willard Wirtz before the House Committee on Consumer Affairs. Hearings on H.R. 11601 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency, 90th Cong., 1st Sess., 734 (1967). Secretary Wirtz estimated that between 100,000 and 300,000 workers lose their jobs every year by reason of wage garnishment. For a well documented study of garnishment in Wisconsin, see Note, *Wage Garnishment as a Collection Device*, 1967 *Wis. L. Rev.* 759, 766 (41% of garnished employees were warned that dismissal will follow second garnishment). See also Note, *Garnishment in Kentucky—Some Defects*, 45 *Ky. L.J.* 322, 330 (1956); *Wall St. J.*, March 15, 1966, at 1, col. 1. See Report of the National Advisory Commission on Civil Disorders at 274-77 (1968).

161. "While consumer credit has enjoyed phenomenal growth over the past 20 years, so have personal bankruptcies. Title II . . . will relieve many consumers from the greatest single pressure, forcing wage earners into bankruptcies." 2 *U.S. Code Cong. & Admin. News* 1963 (1968). See also Countryman, *The Bankruptcy Boom*, 77 *Harv. L. Rev.* 1452 (1964).

at all, favor the defendant rather than the plaintiff. The juvenile defendant is regarded as not fully responsible for his actions. The environmental pressures which shape his behavior are taken into account when his behavior is assessed. The emphasis is upon rehabilitation rather than retribution; the first offender is frequently let off with a warning, and the courts try to provide the defendant with professional services to aid in his rehabilitation. The findings of this study suggest that some of the general assumptions made about the juvenile defendant also apply to many low-income consumers. They, too, are not fully responsible for their actions. Poorly educated, intimidated by complex urban society, bombarded with "bait advertising," they are no match for high-pressure salesmen urging heavy burdens of debt upon them. Perhaps legal machinery can be instituted, which takes these facts about low-income consumers into account.¹⁶²

Wage garnishment helps to perpetuate the social evils that are destroying America. It is the responsibility of the bar to discover and eliminate the vestiges of white power in social legislation, and wage garnishment should therefore be a principle target. Social legislation to reconstruct the life of the urban poor in the wealthiest society in the world must remove the worker from welfare rolls, guarantee honest and productive employment and bring within the law's protection those who are now outside it.

162. D. Caplovitz, *The Poor Pay More* 189-91 (1967).